

STATEMENT OF INTRODUCTION ON
PUBLICLY TRADED PARTNERSHIP BILL
SENATOR MAX BAUCUS
JUNE 13, 2007

Mr. BAUCUS: Mr. President, I am pleased to join my friend and Colleague, Senator Grassley, in introducing legislation to preserve the corporate tax base.

The Federal Government taxes corporations. The tax law treats corporations as economic entities, and taxes them separately from the corporation's shareholders. And the tax law treats partnerships differently from corporations.

Recently, some private equity and hedge fund entities have sought to go public without paying a corporate tax. The bill that we introduce today would treat all publicly traded partnerships that directly or indirectly receive income from providing investment advisory or asset management services as corporations. The tax law ought to treat as corporations entities that function as corporations.

Congress enacted the publicly traded partnership rules in 1987 to preserve the corporate tax base. Congress was concerned that publicly traded partnerships might be able to enjoy the privilege of going public like a corporation without the corporate toll charge. The House Committee report stated:

"These changes [referring to the corporate minimum tax included in the 1986 Act] reflect an intent to preserve the corporate level tax. The committee is concerned that the intent of these changes is being circumvented by the growth of publicly traded partnerships that are taking advantage of an unintended opportunity for disincorporation and elective integration of the corporate and shareholder levels of tax."

Congress carved out an exception for those partnerships that receive 90 percent or more of their income from passive income. Passive income includes dividends, rents, royalties, interest, and the sale of capital gains. But Congress generally treated publicly traded partnerships that derive income from active businesses as corporations.

To emphasize that point, in 1987, the House Committee report stated:

"In general, the purpose of distinguishing between passive-type income and other income is to distinguish those partnerships that are engaged in activities commonly considered as essentially no more than investments, and those activities more typically conducted in corporate form that are in the nature of active business activities."

This year, some private equity and hedge fund management firms are attempting to qualify for partnership tax treatment. They seek to do so even though they derive

virtually all of their income from providing asset management and financial advisory services. These management firms argue that they are able to achieve this result by claiming that all of their income from asset management and investment advisory services is passive. But objective observers would say that this income actually arises from active businesses. Congress' intent in 1987 was to treat such publicly traded partnerships as corporations. In the legislation that we introduce today, we seek to ensure that Congress' original intent is carried out.

This legislation is also important to ensure that some corporations are not disadvantaged because they conduct business in the corporate form and pay taxes as a corporation. Asset management service and investment advisory partnerships provide the same types of active business services as their corporate competitors. Our tax system functions best when it is fair. The tax law ought to treat similarly situated taxpayers the same. Thus, these publicly traded partnerships should be taxed as corporations.

The legislation that we introduce today would clarify the purpose of the publicly traded partnership rules. Our bill would deny the ability of an active financial advisory and asset management business to go public and avoid a corporate level tax on a significant amount of its income.

Senator Grassley and I have asked the staff of the Treasury Department for their views on these transactions, how they plan to address this issue, and whether they think additional statutory changes are necessary to clarify the intent of the publicly traded partnership rules. If a statutory change is needed, then this legislation will accomplish that change. If a change is not needed, then this legislation does not alter the ability of Treasury Department and the Internal Revenue Service to issue guidance and enforce Congressional intent.

I urge my Colleagues to join with Senator Grassley and me to protect the original intent of Congress, to protect the tax base, and to treat similarly situated entities similarly. I urge my Colleagues to support this bill.

Mr. President, I ask unanimous consent that the bill and a technical explanation and reasons for change be printed in the Record at this point.